

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 JOHN T. WILLIAMS, et. al.,

Case No. 3:22-CV-00230-ART-CLB

5 Plaintiffs,

REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹

6 v.

7 JANET F. KING, et. al.,

8 Defendants.

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10 Before the Court is Plaintiff John T. Williams and Williams, Scott & Associates LLC
 11 (collectively referred to as "Plaintiffs"), application to proceed *in forma pauperis* (ECF No.
 12 1), and *pro se* civil rights complaint (ECF No. 1-2). For the reasons stated below, the Court
 13 recommends that the *in forma pauperis* application, (ECF No. 1), be granted, and the
 14 complaint, (ECF No. 1-2), be dismissed, without prejudice.

15 I. ***IN FORMA PAUPERIS APPLICATION***

16 A person may be granted permission to proceed *in forma pauperis* ("IFP") if the
 17 person "submits an affidavit that includes a statement of all assets such [person]
 18 possesses [and] that the person is unable to pay such fees or give security therefore.
 19 Such affidavit shall state the nature of the action, defense or appeal and affiant's belief
 20 that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d
 21 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed
 22 IFP, not just prisoner actions).

23 Pursuant to LSR 1-1: "Any person who is unable to prepay the fees in a civil case
 24 may apply to the court for authority to proceed [IFP]. The application must be made on
 25 the form provided by the court and must include a financial affidavit disclosing the

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27 ¹ This Report and Recommendation is made to the Honorable Anne R. Traum,
 United States District Judge. The action was referred to the undersigned Magistrate
 28 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 applicant's income, assets, expenses, and liabilities."

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with
 3 some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
 4 Cir. 1981) (quotation marks and citation omitted). A litigant need not "be absolutely
 5 destitute to enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*,
 6 335 U.S. 331, 339 (1948).

7 A review of the application to proceed IFP reveals Plaintiffs cannot pay the filing
 8 fee; therefore, the Court recommends that the application, (ECF No. 1), be granted.

9 **II. SCREENING STANDARD**

10 Prior to ordering service on any Defendant, the Court is required to screen an *in*
 11 *forma pauperis* complaint to determine whether dismissal is appropriate under certain
 12 circumstances. See *Lopez*, 203 F.3d at 1126 (noting the *in forma pauperis* statute at 28
 13 U.S.C. § 1915(e)(2) requires a district court to dismiss an *in forma pauperis* complaint
 14 for the enumerated reasons). Such screening is required before a litigation proceeding
 15 *in forma pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507
 16 (9th Cir. 2015).

17 "[T]he court shall dismiss the case at any time if the court determines that – (A)
 18 the allegations of poverty is untrue; or (B) the action or appeal – (i) is frivolous or
 19 malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks
 20 monetary relief against a defendant who is immune from such relief." 28 U.S.C. §
 21 1915(e)(2)(A), (B)(i)-(iii).

22 Dismissal of a complaint for failure to state a claim upon which relief may be
 23 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. §
 24 1915(e)(2)(B)(ii) tracks that language. When reviewing the adequacy of a complaint
 25 under this statute, the court applies the same standard as is applied under Rule 12(b)(6).
 26 See, e.g., *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) ("The standard for
 27 determining whether a plaintiff has failed to state a claim upon which relief can be granted
 28 under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6)

1 standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling
 2 on a question of law. See *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir.
 3 2000) (citation omitted).

4 The Court must accept as true the allegations, construe the pleadings in the light
 5 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v.*
 6 *McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in *pro se* complaints
 7 are “held to less stringent standards than formal pleadings drafted by lawyers[.]” *Hughes*
 8 *v. Rowe*, 449 U.S. 5, 9 (1980) (internal quotations marks and citation omitted).

9 A complaint must contain more than a “formulaic recitation of the elements of a
 10 cause of actions,” it must contain factual allegations sufficient to “raise a right to relief
 11 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
 12 “The pleading must contain something more. . . than. . . a statement of facts that merely
 13 creates a suspicion [of] a legally cognizable right of action.” *Id.* (citation and quotation
 14 marks omitted). At a minimum, a plaintiff should include “enough facts to state a claim to
 15 relief that is plausible on its face.” *Id.* at 570; see also *Ashcroft v. Iqbal*, 556 U.S. 662,
 16 678 (2009).

17 A dismissal should not be without leave to amend unless it is clear from the face
 18 of the complaint the action is frivolous and could not be amended to state a federal claim,
 19 or the district court lacks subject matter jurisdiction over the action. See *Cato v. United*
 20 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
 21 Cir. 1990).

22 III. SCREENING OF COMPLAINT

23 The complaint asserts violations of 42 U.S.C. § 1983 and claims under *Bivens v.*
 24 *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and
 25 relates to underlying criminal proceedings and convictions that occurred in the State of
 26 Georgia. (ECF No. 1-2.) Plaintiffs assert these claims against Defendants District Court
 27 Judge Janet F. King and Circuit Court Judge Richard J. Sullivan and seek declaratory
 28 and monetary relief. (*Id.* at 5, 27.)

1 There is no indication that any of the individual defendants reside in the District of
 2 Nevada. Instead, the factual allegations, while confusing, reveal that the underlying
 3 criminal proceeding took place in the District of Georgia. However, a civil action must be
 4 brought in (1) a judicial district in which any *defendant* resides, if all defendants reside in
 5 the same state where the district is located, (2) a judicial district in which a substantial
 6 part of the events or omissions giving rise to the claim occurred, or a substantial part of
 7 property that is the subject of the action is situated, or (3) a judicial district in which any
 8 defendant is subject to personal jurisdiction at the time the action is commenced, if there
 9 is no district in which the action may otherwise be brought. 28 U.S.C. § 1331(b).

10 Williams has not alleged that any defendant resides in the District of Nevada, that
 11 any of the events giving rise to the action transpired here and he has not otherwise
 12 alleged any connection to this District. Therefore, it appears the Court lacks personal
 13 jurisdiction over the defendants and venue is improper here. The action should be
 14 dismissed, without prejudice, only to the extent Williams may file a complaint stating
 15 plausible claims for relief in the correct court.

16 **IV. CONCLUSION**

17 Consistent with the above, the Court finds that dismissal is warranted based on a
 18 lack of personal jurisdiction and improper venue.

19 The parties are advised:

20 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 21 Practice, the parties may file specific written objections to this Report and
 22 Recommendation within fourteen days of receipt. These objections should be entitled
 23 "Objections to Magistrate Judge's Report and Recommendation" and should be
 24 accompanied by points and authorities for consideration by the District Court.

25 2. This Report and Recommendation is not an appealable order and any
 26 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
 27 District Court's judgment.

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V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that Plaintiffs' application to proceed *in forma pauperis*, (ECF No. 1), be **GRANTED**;

IT IS FURTHER RECOMMENDED that the Clerk **FILE** the complaint, (ECF No. 1-2);

IT IS FURTHER RECOMMENDED that the complaint, (ECF No. 1-2), be **DISMISSED, WITHOUT PREJUDICE**, to the extent Plaintiffs can assert plausible claims for relief in the correct court; and,

IT IS FURTHER RECOMMENDED that this action be **CLOSED** and that judgment be entered accordingly.

DATED: May 24, 2022


UNITED STATES MAGISTRATE JUDGE